

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JOAQUIN FRANQUI III, administrator of THE ESTATE
OF JACK FRANQUI IV, SIMON EARL, NICHOLAS
EARL, AND ANNE EARL,

**ANSWER
TO AMENDED COMPLAINT**

Plaintiffs,

13-cv-5943(JS)(SIL)

-against-

JURY TRIAL DEMANDED

THE COUNTY OF SUFFOLK, SUFFOLK COUNTY
POLICE DEPARTMENT, PO KAREN GRENA, CAPT.,
ALEXANDER CRAWFORD, PO NICHOLAS ROBBINS,
PO JANINE LESIEWICZ, PO JAMES V. RIOS,
SGT. KEVIN E. O'REILLY, PO JOSEPH SIMEONE,
PO GEORGE OLIVA, LT. JOHN McHUGH, PO JOHN
BORESHESKY, SGT. JOHN J. DOYLE, PO BRANDI
MCCLoughlin, PO LORRAINE ZALESKI, PO DAVID
SAMARTINO, PO BRIAN KLAMMER, AND POLICE
OFFICERS JOHN AND JANE DOES 1-5.

Defendants.

Defendants, County of Suffolk, Suffolk County Police Department, P.O. Karen Grenia,
Capt. Alexander Crawford, P.O. Nicholas Robbins, P.O. Janine Lesiewicz, P.O. James V. Rios,
P.O. George Oliva, Lt. John McHugh, P.O. Boreshesky, Sgt. John J. Doyle, P.O. Brandi
McLoughlin, P.O. Lorraine Zaleski P.O. David Samartino and P.O. Brian Klammer, by their
attorney, Dennis M. Brown, Suffolk County Attorney, by Arlene S. Zwilling, Assistant County
Attorney, answering plaintiffs' amended complaint respectfully:

1. Ayer that the allegations contained in the paragraphs numbered 1, 2, 3, 4, 5, 6 and
7 of the amended complaint characterize the legal action being brought and purport to invoke the
jurisdiction of the Court pursuant to the enumerated statutes and, as such, make no answer save

to demand strict proof thereof and to deny any conduct giving rise to any cause of action thereunder.

2. Deny, upon information and belief, the allegations contained in the paragraphs numbered 8, 35, 129, 130, 131, 132, 133, 134, 135, 174, 175, 176, 177, 178, 204, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 246 and 247 of the amended complaint.

3. Deny knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs numbered 9, 10, 11, 12, 13, 14, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 136, 173, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 205, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244 and 245 of the amended complaint.

4. Deny knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs numbered 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 of the amended complaint and refer all questions of law to the Court.

5. Deny knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs numbered 32, 33 and 34 of the amended complaint except admit receipt of a purported notice of claim and refer all questions of law to the Court.

AS TO COUNT ONE

6. Answering the paragraph numbered 248 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

7. Deny, upon information and belief, the allegations contained in the paragraph numbered 249 of the amended complaint.

AS TO COUNT TWO

8. Answering the paragraph numbered 250 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

9. Deny, upon information and belief, the allegations contained in the paragraph numbered 251 of the amended complaint.

AS TO COUNT THREE

10. Answering the paragraph numbered 252 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

11. Deny, upon information and belief, the allegations contained in the paragraph numbered 253 of the amended complaint.

AS TO COUNT FOUR

12. Answering the paragraph numbered 254 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

13. Deny, upon information and belief, the allegations contained in the paragraph numbered 255 of the amended complaint.

AS TO COUNT FIVE

14. Answering the paragraph numbered 256 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

15. Deny, upon information and belief, the allegations contained in the paragraph numbered 257 of the amended complaint.

AS TO COUNT SIX

16. Answering the paragraph numbered 258 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

17. Deny, upon information and belief, the allegations contained in the paragraph numbered 259 of the amended complaint.

AS TO COUNT SEVEN

18. Answering the paragraph numbered 260 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

19. Deny, upon information and belief, the allegations contained in the paragraph numbered 261 of the amended complaint.

AS TO COUNT EIGHT

20. Answering the paragraph numbered 262 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

21. Deny, upon information and belief, the allegations contained in the paragraph numbered 263 of the amended complaint.

AS TO COUNT NINE

22. Answering the paragraph numbered 264 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

23. Deny, upon information and belief, the allegations contained in the paragraph numbered 265 of the amended complaint.

AS TO COUNT TEN

24. Answering the paragraph numbered 266 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

25. Deny, upon information and belief, the allegations contained in the paragraph numbered 267 of the amended complaint.

AS TO COUNT ELEVEN

26. Answering the paragraph numbered 268 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

27. Deny, upon information and belief, the allegations contained in the paragraph numbered 269 of the amended complaint.

AS TO COUNT TWELVE

28. Answering the paragraph numbered 270 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

29. Deny, upon information and belief, the allegations contained in the paragraph numbered 271 of the amended complaint.

AS TO COUNT THIRTEEN

30. Answering the paragraph numbered 272 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

31. Deny, upon information and belief, the allegations contained in the paragraphs numbered 273, 274 and 275 of the amended complaint.

AS TO COUNT FOURTEEN

32. Answering the paragraph numbered 276 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

33. Deny, upon information and belief, the allegations contained in the paragraphs

numbered 277, 278, 279, 280 and 281 of the amended complaint.

AS TO COUNT FIFTEEN

34. Answering the paragraph numbered 282 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

35. Deny, upon information and belief, the allegations contained in the paragraphs numbered 283, 284 and 285 of the amended complaint.

AS TO COUNT SIXTEEN

36. Answering the paragraph numbered 286 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

37. Deny, upon information and belief, the allegations contained in the paragraphs numbered 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301 and 302 of the amended complaint.

AS TO COUNT SEVENTEEN

38. Answering the paragraph numbered 303 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

39. Deny, upon information and belief, the allegations contained in the paragraphs numbered 304, 305 and 306 of the amended complaint.

AS TO COUNT EIGHTEEN

40. Answering the paragraph numbered 307 of the amended complaint repeat,

reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

41. Deny, upon information and belief, the allegations contained in the paragraphs numbered 308, 309, 310, 311, 312, 313, 314, 315 and 316 of the amended complaint.

AS TO COUNT NINETEEN

42. Answering the paragraph numbered 317 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

43. Deny, upon information and belief, the allegations contained in the paragraph numbered 318 of the amended complaint.

AS TO COUNT TWENTY

44. Answering the paragraph numbered 319 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

45. Deny, upon information and belief, the allegations contained in the paragraph numbered 320 of the amended complaint.

AS TO COUNT TWENTY-ONE

46. Answering the paragraph numbered 321 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

47. Deny, upon information and belief, the allegations contained in the paragraph numbered 322 of the amended complaint.

AS TO COUNT TWENTY-TWO

48. Answering the paragraph numbered 323 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

49. Deny, upon information and belief, the allegations contained in the paragraph numbered 324 of the amended complaint.

AS TO COUNT TWENTY-THREE

50. Answering the paragraph numbered 325 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

51. Deny, upon information and belief, the allegations contained in the paragraph numbered 326 of the amended complaint.

AS TO COUNT TWENTY-FOUR

52. Answering the paragraph numbered 327 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

53. Deny, upon information and belief, the allegations contained in the paragraph numbered 328 of the amended complaint.

AS TO COUNT TWENTY-FIVE

54. Answering the paragraph numbered 329 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

55. Deny, upon information and belief, the allegations contained in the paragraph numbered 330 of the amended complaint.

AS TO COUNT TWENTY-SIX

56. Answering the paragraph numbered 331 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

57. Deny, upon information and belief, the allegations contained in the paragraph numbered 332 of the amended complaint.

AS TO COUNT TWENTY-SEVEN

58. Answering the paragraph numbered 333 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

59. Deny, upon information and belief, the allegations contained in the paragraph numbered 334 of the amended complaint.

AS TO COUNT TWENTY-EIGHT

60. Answering the paragraph numbered 335 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

61. Deny, upon information and belief, the allegations contained in the paragraph numbered 336 of the amended complaint.

AS TO COUNT TWENTY-NINE

62. Answering the paragraph numbered 337 of the amended complaint repeat,

reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

63. Deny, upon information and belief, the allegations contained in the paragraph@ numbered 338 of the amended complaint.

AS TO COUNT THIRTY

64. Answering the paragraph numbered 339 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

65. Deny, upon information and belief, the allegations contained in the paragraph numbered 340 of the amended complaint.

AS TO COUNT THIRTY-ONE

66. Answering the paragraph numbered 341 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

67. Deny, upon information and belief, the allegations contained in the paragraph numbered 342 of the amended complaint.

AS TO COUNT THIRTY-TWO

68. Answering the paragraph numbered 343 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

dib 69. Deny, upon information and belief, the allegations contained in the paragraph numbered 344 of the amended complaint.

AS TO COUNT THIRTY-THREE

70. Answering the paragraph numbered 345 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

71. Deny, upon information and belief, the allegations contained in the paragraph numbered 346 of the amended complaint.

AS TO COUNT THIRTY-FOUR

72. Answering the paragraph numbered 347 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

73. Deny, upon information and belief, the allegations contained in the paragraph numbered 348 of the amended complaint.

AS TO COUNT THIRTY-FIVE

74. Answering the paragraph numbered 349 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

75. Deny, upon information and belief, the allegations contained in the paragraph numbered 350 of the amended complaint.

AS TO COUNT THIRTY-SIX

76. Answering the paragraph numbered 351 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

77. Deny, upon information and belief, the allegations contained in the paragraph numbered 352 of the amended complaint.

AS TO COUNT THIRTY-SEVEN

75. Answering the paragraph numbered 353 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

76. Deny, upon information and belief, the allegations contained in the paragraph numbered 354 of the amended complaint.

AS TO COUNT THIRTY-EIGHT

77. Answering the paragraph numbered 355 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

78. Deny, upon information and belief, the allegations contained in the paragraph numbered 356 of the amended complaint.

AS TO COUNT THIRTY-NINE

79. Answering the paragraph numbered 357 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

80. Deny, upon information and belief, the allegations contained in the paragraph numbered 358 of the amended complaint.

AS TO COUNT FORTY

81. Answering the paragraph numbered 359 of the amended complaint repeat,

reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

82. Deny, upon information and belief, the allegations contained in the paragraph numbered 360 of the amended complaint.

AS TO COUNT FORTY-ONE

83. Answering the paragraph numbered 361 of the amended complaint repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

84. Deny, upon information and belief, the allegations contained in the paragraph numbered 362 of the amended complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

85. That the Amended complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

86. That the damages sustained by plaintiffs, if any, were caused by the plaintiffs' own culpable and/or negligent conduct.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

87. That the amended complaint fails to set forth facts sufficient to constitute a deprivation of any constitutional right or other basis for a civil rights claim.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

88. That no policy, statement, ordinance, regulation or decision officially adopted and/or promulgated by defendants or otherwise ratified by defendants authorized a deprivation of

plaintiffs' constitutional rights.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

89. That no custom or usage adopted, followed, endorsed or ratified by defendants authorized a deprivation of plaintiffs' constitutional rights.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

90. That the doctrines of respondeat superior and vicarious liability do not apply to a civil rights claim.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

91. That municipal defendants are not liable for punitive damage awards.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

92. That this Court lacks subject matter jurisdiction.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

93. That plaintiffs have failed to comply with the statutory conditions precedent to commencement of an action against municipal defendants as set forth in the New York General Municipal Law.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

94. That plaintiffs' claims, if any, are barred in whole or in part by the Statute of Limitations.

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

95. That defendants' actions, if any, were justified by the facts and circumstances presented.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

96. That the arrest and/or detention, if any, were reasonable and based upon probable cause to believe that the plaintiff had committed a crime and/or offense.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

97. That the defendants, at all times complained of, acted reasonably and in good faith in the discharge of their official duties and responsibilities.

98. That defendants acted in what they did solely pursuant to their duties and responsibilities as law enforcement and/or prosecuting officials.

99. That defendants at all times acted in good faith in that they reasonably believed that they were exercising and acting within their statutory and constitutional powers.

100. That in performing such duties and responsibilities, defendants are and were protected by absolute and/or qualified Federal and/or State immunity.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

101. That this action is barred by the doctrines of qualified and/or absolute governmental immunity for discretionary acts.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

102. To the extent that the Amended complaint purports to set forth any supplemental state law claims, they are barred by the plaintiff's failure to comply with the statutory conditions precedent to commencement of an action against municipal defendants as set forth in the New York General Municipal Law.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

103. To the extent that the amended complaint purports to set forth any supplemental state law claims, they are barred by the Statute of Limitations.

AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE

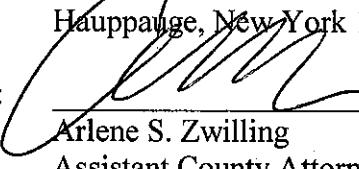
104. That the Suffolk County Police Department is not an entity susceptible to suit.

WHEREFORE, defendants demand judgment against the plaintiffs dismissing the amended complaint together with the costs, disbursements and reasonable attorneys' fees of this action, and for such other and further relief as this Court deems just and proper.

DATED: Hauppauge, New York
May 15, 2015

Yours etc.,
Dennis M. Brown
Suffolk County Attorney
Attorney for Defendants County of Suffolk,
Suffolk County Police Department, Grenia,
Crawford, Robbins, Lesiewicz, Rios, Oliva,
McHugh, Boreshesky, Doyle, McLoughlin,
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By:


Arlene S. Zwilling
Assistant County Attorney

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